

PERSONAL SEARCH REVIEW COMMISSION

**REPORT ON  
PERSONAL SEARCHES  
BY THE UNITED STATES  
CUSTOMS SERVICE**

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# Preface

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It is the mission of the United States Customs Service to ensure that all goods and persons entering and exiting the United States do so in compliance with all United States laws and regulations. Specifically, the Customs Service is responsible for collecting duties, taxes, and fees and preventing the illegal importation of merchandise, including narcotics, into the United States. As it has executed this mission, the Customs Service has been questioned and criticized for using procedures that appear to have a certain level of bias and ethnic stereotyping in the selection of passengers for personal searches at ports of entry.

In response to these complaints, Customs Service Commissioner Raymond W. Kelly has taken several steps,<sup>1</sup> including the appointment, in April 1999, of a short-term external review group, the Personal Search Review Commission. The Commission was asked to consider several issues and report the findings to Commissioner Kelly.<sup>2</sup> Simply stated, those issues were:

Are/were there problems and negative perceptions with regard to personal search procedures by Customs at United States airports? To what extent is there racial profiling by Customs Service officials?<sup>3</sup>

- What is the background, including the authority, role, and responsibility of the Customs Service, with regard to personal searches at airports, and how are those responsibilities executed?
- Are the initiatives established recently within the Customs Service adequate to address any problems that may have existed?
- What steps should be taken to improve personal search processing by the Customs Service to address any problems in the future?

The Commission was composed of four non-Customs federal government officials: Hubert T. Bell, Ana Maria Salazar, Robin Renee Sanders, and Constance Berry Newman, Chair.<sup>4</sup> In addition, Sanford Cloud, Jr., served as independent adviser to the Commissioner.

At the outset, the Commission members agreed on the primary lines of inquiry and the sources of information they needed to prepare a baseline report to the Commissioner.

The original timeframe of the Commission's inquiry was six months, with a report to the Commissioner before the end of August. Because the Commissioners decided

to expand their inquiry to include visits to 14 airports; however, the report was not submitted to the Commissioner until early 2000.

Given the short time for the inquiry, Commission members used two basic methods: interviewing Customs Service officials at major airports and headquarters and reviewing secondary and other resource materials.<sup>5</sup> It is important to note that during the period of the review, Customs officials under the leadership of Commissioner Kelly were making key changes in the way the Customs Service executed its responsibilities. To the extent that it was feasible within the timeframe of the review, the Commission reviewed the new approaches to personal searches of passengers to determine to what extent they could address concerns about the way the Service operates.

As stated above, the Commission members visited a total of 14 airports, which<sup>6</sup> represent the port of entry of 66.1 percent of the air passengers arriving in the United States. The Commission members interviewed more than 200 people in the field.<sup>7</sup> In addition, they interviewed members of the headquarters staff and leaders of the National Treasury Employees Union. The Commission members reviewed passenger complaints, Congressional testimony, court cases, previous reports, and relevant Customs documents and materials.

This report is organized as outlined below. The appendices provide a more detailed listing of the issues considered and the interview guidelines used in preparation of the report.

**Section 1** describes the basic inquiry. The primary topic was the nature and the extent of the allegations by passengers about the Customs Service's personal search policies and procedures.

**Section 2** reviews the Customs Services enforcement authority and responsibility with regard to international passenger entry and personal search activities. In preparing this section, the Commission reviewed summary statistics that document the nature, extent, and impact of personal searches of passengers by the Customs Service.

**Section 3** outlines three major categories of issues considered by the Commission, along with the Commission's findings and recommendations in each category.

- **Category 1** issues address the effectiveness of the personal search processing policies and procedures, as well as their implementation. Among the sub-issues considered in this category is the following question: Is there built-in accountability throughout the organization for effectiveness and conformance to the regulations and policies of the Customs Service?
- **Category 2** issues go to the heart of some of the allegations and address the questions: Does racial and ethnic profiling occur in the Customs Service as a part of passenger processing procedures? How? Where? Based on what authorities and procedures? The Customs Service says it does not use profiling, but rather uses indicators or observation techniques as one of six ways to identify passen-

gers for searches. What is the difference between profiling and indicators/observation techniques?

Category 2 issues also focus on the manner in which the Customs Service handles allegations of abuses in passenger processing procedures when balancing the enforcement of the law to protect the national interest against the need to protect the rights of individuals.

- **Category 3 issues consider the effectiveness of the new Customs Service approaches to personal searches. Among the specific topics covered under this category are the new approval processes, training initiatives, passenger information, passenger complaints, and data collection and analysis.**

This section of the report also considers additional initiatives, procedures, and recommendations for the future. Among the steps under review for future initiatives are further review of the extent and composition of training, improved identification of inspectors, and potential contributions to effective personal search procedures by the airlines, the media, and airport authorities.

# 1

## The Basic Inquiry

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The primary question considered here is: What are the allegations about the Customs Service's personal search passenger policies and procedures?

### Allegations about racial profiling

Allegations have been made that the Customs Service uses racial and ethnic profiling in determining who is to be further questioned or searched at airports. A more pointed accusation has been that the Customs Service has particularly stereotyped and profiled African American and Hispanic women for unprofessional, intrusive, and inhumane personal searches.

Examples from Congressional testimony, legal cases, formal and informal complaints, and observations from the general public indicate both real and perceived problems within the Customs Service's personal search policies and procedures.

Opening statements and testimony before the House Committee on Ways and Means, Subcommittee on Oversight, on Customs Service passenger inspection operations provided examples of concerns about the search policies and procedures. At the May 20, 1999, hearing, Representative Amo Houghton (R-N.Y.) said: "Over the past few months we have heard serious allegations that the Customs Service has unfairly targeted Black and Hispanic air passengers for personal searches based on their race." Representative William J. Coyne (D-Pa.) said: "What is clear to all of us...is that a significant number of U.S. citizens strongly believe that at some U.S. airports, one or more Customs agents are selecting passengers for intrusive physical searches based on their race." Representative John Lewis (D-Ga.), who requested the hearing, said: "Allegations of racial profiling by Customs inspectors raise very serious concerns regarding the treatment of international travelers, especially people of color."

Among those testifying before the House Subcommittee was Amanda Burtica, a Hispanic passenger, who won a civil judgment of \$450,000 from the Customs Service for a 1994 incident. She testified about a demeaning and intrusive search and said: "Nobody should have to go through what I went through." Janneral Denson, an African American woman, pregnant in February 1997, testified about an exten-

sive personal search including body cavity searches, handcuffing, forced ingestion of laxatives, and inability to make a phone call to her mother or her lawyer. Both women were found not to have drugs on or in them.<sup>8</sup>

Other statements on this issue come from attorney Edward M. Fox, who is representing 90 African American women who have alleged degrading pat downs, body searches, visual cavity searches, physical cavity searches, and X-rays at O'Hare Airport in Chicago.<sup>9</sup> Fox's statements that highlight the issue are as follows:

- "It quickly became apparent that there was a racial component to the searches. Only African American women were calling (me). Additionally, many of them recounted stories of seeing only other African American women in the 'Secondary' area where further questioning and searching are commenced."
- "It is disturbing and absolutely true that often Customs recommends searches for these African American women based solely on the amount of travel they do."

Another example of the treatment of passengers by Customs officials is covered in a January 1998 letter that alleged rude, unprofessional, and demeaning treatment of a passenger at one of the airports. The information that the letter-writer sought from the Service gives an idea of the nature and extent of the concerns of some members of the public.<sup>10</sup> The information sought included:

- the names and positions of the agents involved.
- whether a report was prepared on the incident and the disposition of the report.
- the factual basis that gave the inspectors reasonable suspicion to conduct an intrusive body search of the individual.
- whether the Customs Service uses one or more profiles in determining who should be subjected to a body search.
- whether agents of the Customs Service are instructed to or trained to verbally abuse and inflict emotional stress on U.S. citizens.
- whether the Customs Service keeps records of the sex, age, type of baggage, and/or other characteristics of persons who are subjected to body search.

## **Allegations about unnecessary and ineffective searches**

Questions have been raised about the effectiveness of the personal searches. The question that needs to be addressed is whether the Customs anti-drug enforcement efforts at the airports are an effective component of the national anti-drug strategy. The Commission did not draw conclusions about this line of inquiry. However, we did consider the data in order to provide a context within which our primary findings were to be considered.



**According to the Customs Service, on a typical day the Service examines:<sup>11</sup>**

- 1.3 million passengers.
- 2,542 aircraft.
- more than 341,000 vehicles.
- more than 45,000 trucks/containers.
- 550 vessels.

**On a typical day, the Customs Service handles:**

- 67 arrests.
- 115 narcotics seizures.
- 12 currency seizures.
- 143 other enforcement seizures of conveyances, ammunition, commercial merchandise, real estate, firearms, and child pornography.

**On a typical day, the Customs Service seizes:**

- 3,925 pounds of narcotics.
- \$1.2 million in U.S. currency.
- \$368,000 in conveyances.
- \$24,000 in arms and ammunition.
- \$554,000 in commercial merchandise.

**In fiscal year 1999, more than 75 million people traveled by air, 394 million by land, and 9 million by sea.**

**The table below provides some basic statistics covering passenger operations in fiscal year 1999. These seizures are from commercial air passengers in-bound from airports.**

<b>FY 1999 Seizures</b>	<b>Number of Seizures</b>	<b>Pounds</b>
Heroin	394	1,185
Cocaine	579	3,729
Marijuana	1,152	1,959

**During the period between October 1, 1998, and March 31, 1999, 70 percent of all heroin seizures were the result of positive searches of air passengers.<sup>12</sup> During the same period, 38 percent of all cocaine seizures were the result of positive personal search of air passengers.**

**Based on the magnitude and scope of the Customs seizures, it appears that anti-drug efforts at the point of entry are an important component of the national anti-drug strategy. What this report seeks to determine is whether the procedures used are balanced with the need to protect individual rights. This question leads to the kinds of recommendations we have made here, and in particular to Recommendation 1.**

# 2

## Background on the Customs Service's Processing of Passengers

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### U.S. Customs authority and responsibility with regard to passenger entry

The authority of the Customs Service to conduct personal searches at ports of entry is derived from the First Congress,<sup>13</sup> allowed by the Constitution,<sup>14</sup> specified in the Tariff Act of 1930 (19 USC 482 and 1582), and confirmed in court decisions. Those authorities give Customs officers the right to stop, question, and examine anyone entering the United States. This enforcement authority supports the national interest in preventing contraband from being smuggled into the United States.

19 USC 482 authorizes Customs officers to search and seize persons at the border that they suspect of carrying merchandise subject to duty or merchandise imported illegally. 19 USC 1582 provides that the Secretary of the Treasury may prescribe regulations for the search of persons and baggage under which all persons coming in to the United States shall be liable to detention and search by officers of the Government.

Border searches are a well-recognized and long-established exception to the probable cause and warrant requirements of the Fourth Amendment. Even so, the conduct of border searches, as with any search, must be reasonable. The courts have consistently found that the government is allowed significant leeway "pursuant to the longstanding right of the sovereign to protect itself by stopping and examining persons and property crossing into this country."

The Supreme Court stated (*United States v. Ramsey*, 431 U.S. 606, 616, 619 (1972)) that: "Border searches...have been considered to be 'reasonable' by the single fact that the person or item in question had entered into our country from outside." In those searches (*United States v. Montoya de Hernandez*, 473 U.S. 531,

539-40 (1985)), the balance between the sovereign's interests at the border and the privacy rights of international travelers is struck more favorably to the government.<sup>15</sup>

## Basic statistical data on passenger processing

Section 1 of this report included some basic information on the Customs Service's workload. The table below provides data on searches by sex, race, and ethnic background.<sup>16</sup> No conclusions are drawn about this data. It is provided to give a context within which the Commission considered its findings on the primary issues.

	Data Category	Total Number	% of Total
<b>Sept. 96-</b>	International Travelers	69,000,000	
<b>Sept. 97</b>	Total Subject to Body Search	42,474	0.0006
	• Pat Down	39,990	0.0006
	• Cavity	14	0.0000002
	• Immediate Pat Down	81	0.000001
	• X-ray	693	0.00001
	Positive Searches	1,763	0.00003
	Negative Searches	37,277	0.0005
	<b>Percentage of the Positive Searches</b>		
	• Blacks	392	22.0
	• Latinos	345	20.0
	• Whites	664	38.0
	<b>Percentage of the Negative Searches</b>		
	• Blacks	4,838	13.0
	• Latinos	12,572	33.0
	• Whites	9,597	28.0
<b>Sept. 97-</b>	International Travelers	71,558,239	
<b>Sept. 98</b>	Total Subject to Body Search	46,303	0.0006
	• Pat Downs	43,482	93.9
	• Cavity	13	0.00028
	• Immediate Pat Downs	118	0.0025
	• X-ray	724	0.015
	Positive Searches	1,517	0.032
	Negative Searches	41,412	0.00057
	<b>Percentage of the Positive Searches</b>		
	• Blacks	363	24.0
	• Latinos	218	14.0
	• Whites	682	45.0

**Report on Personal Searches by the United States Customs Service**

	<b>Data Category</b>	<b>Total Number</b>	<b>% of Total</b>
	<b>Percentage of the Negative Searches</b>		
	• Blacks	5,628	14.0
	• Latinos	14,575	35.0
	• Whites	10,821	26.0
<b>Sept. 98-</b>	International Travelers	75,539,692	
<b>Sept. 99</b>	Total Subject To Body Search	25,855	0.0003
	• Pat Down	23,593	0.0003
	• Cavity	24	0.0000003
	• Immediate Pat Down	2389	0.000003
	• X-ray	667	0.000008
	Positive Searches	1,318	0.00002
	Negative Searches	21,473	0.0003
	<b>Percentage of the Positive Searches</b>		
	• Blacks	356	27.0
	• Latinos	218	17.0
	• Whites	552	42.0
	<b>Percentage of the Negative Searches</b>		
	• Blacks	3,833	18.0
	• Latinos	6,464	30.0
	• Whites	6,582	31.0

# 3

## Issues, Findings, and Recommendations

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**This section outlines three major categories of issues considered by the Commission, along with the Commission's findings and recommendations.**

**The category 1 issues address the effectiveness of the personal search processing policies and procedures and their implementation.**

**Among the sub-issues considered in this category is the following: Is there built-in accountability throughout the Customs Service organization for effectiveness, conformance to the regulations and policies, and treatment of passengers?**

**Other, more detailed questions that the Commission considered in drawing conclusions about the effectiveness of the personal search processing policies and procedures and their implementation were as follows:**

- **Are the passenger processing procedures effective?**
- **Are the facilities proper and accommodating to the passengers?**
- **Do the passengers have to leave the port for certain types of searches? Is this necessary? What are the options?**
- **Do the Customs officials adequately respond to the questions of passengers? Is the amount of information given by Customs officials limited by a concern that drug smugglers would benefit from the additional information?**
- **Are the passenger service representatives effective?**
- **What is the quality of the information provided to passengers?**
- **What are the rules for allowing passengers who are searched to make phone calls or to contact traveling or waiting companions? Are the rules properly implemented?**
- **Is the complaint process effective?**

These questions were not answered separately in this report, but they were considered by the Commissioners in their inquiry, and interviewees' responses helped to inform the recommendations on these issues. The Commissioners did gain certain impressions and answered many questions during our visits to the 14 airports and the interviews at headquarters.

We all noted that there are many extremely dedicated people carrying out the policies and enforcement responsibilities, as they understand them, in a professional manner.

Commissioner Kelly has already undertaken impressive changes.<sup>17</sup> We reviewed the major changes in policies to determine the extent to which they addressed our findings. We have commented on those changes in policies in this report. However, it was too early to evaluate the effectiveness of the implementation of the policies. Such evaluation should be built into the on-going monitoring of the agency under the leadership of the Customs Service.

### Background on the findings about the effectiveness of the personal search policies and procedures

The Customs Service describes its mission as follows: "We are the guardians of our Nation's borders—America's frontline. We serve and protect the American public with integrity, innovation, and pride. We enforce the laws of the United States, safeguard the revenue, and foster lawful international trade and travel."

In a Customs interim status report presented in May 1999 covering the air passenger customer satisfaction survey conducted at 8 of the top 23 airports between 1998 and 1999, most people interviewed were confident that the Customs process prevents illegal activities because the officers are well-trained and the process is thorough. This particular survey did not identify findings of respondents by race or ethnic origin. The basic findings were as follows:

- Ninety-six percent of the 2,340 individuals surveyed indicated that the Customs Service personnel represented professionalism, defined as doing their jobs and being polite. Eighty-one persons found the Customs personnel somewhat unprofessional, and 5 found them very unprofessional. The major reasons given for identifying the personnel as unprofessional were negative attitudes (41 people), unhelpful, rude comments, not attentive, poor grooming, chewing gum, unfriendly.
- Seventy-five percent of the 2,340 agreed that the Customs Service areas of the airports were effective, and 20 percent were neutral on this point. The best part of the arrival process, according to those surveyed, was the rapid turnaround and

the polite officials. The worst part of the arrival process was nothing in particular (56%) and waiting for their bags (20%).

- The individuals surveyed were generally familiar with the Customs Service requirements and could distinguish between the Customs Service and the Immigration and Naturalization Service. However, fewer than 30 percent could distinguish between United States Customs and the United States Department of Agriculture.
- The people who were sent to the secondary process section (where passengers are questioned further) answered the survey question "Why do you think you went through the secondary process?" The answers were as follows: don't know (35%); information on the form (25%); random inspection (16%); other reasons, including color of skin, language, travel a lot, prior seizure (11%), or fit a profile (7%). When asked: "What can be done to avoid secondary?" they answered: nothing (70%); don't know (18%)
- The recommendations for improvement of the Customs processing procedures by those surveyed were: nothing (49%); more enforcement (17%); use more technology (10%). Other recommendations included: improve immigration, eliminate the declaration form, improve the signage, and improve inspectors' attitude.

## Specific Findings and Recommendations

### Finding 1: The public's understanding and acceptance of Customs Service responsibilities

Even though the May 1999 survey indicates that the Customs Service personnel performed in a professional manner, a basic issue has not been adequately addressed: whether there is a proper balance between protection of the rights of the individual against intrusive personal searches and effective seizure of drugs.

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**Recommendation 1:** The Customs Service should initiate a high-level policy discussion on this issue to include federal counter-narcotics policymakers, enforcement officials, and the public at large. The Customs Service could understand the public's view of this issue better if the Service conducted surveys or used focus groups organized by the port directors or the Customs Management Centers and established a central reporting system to inform them of possible policy changes. The reports of the surveys and focus groups should identify the race/ethnic origin of the respondents.

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### Finding 2: The accountability process

In the past, the accountability covering the personal search processes throughout the organization seemed weak. Further, it was not clear how the U.S. Attorneys should be held accountable for their role in the process. Only recently, under Com-



missioner Kelly, the directors of the Customs Management Centers,<sup>18</sup> the port directors, and Customs supervisors have become more directly involved in supervising and monitoring the personal search actions on the front line.<sup>19</sup>

One way that accountability is often determined is through the performance management system. The present performance agreement for managers and supervisors is general, in that it covers all managers and supervisors.<sup>20</sup> It is left to the employee and supervisor to outline the specific program/mission objectives. This is as expected. Among the critical areas in the performance review process are competencies in business practices, leadership/management practices, and values. Another critical area is equal employment opportunity, to ensure fairness and equity in the workplace. We did not review the extent to which the appraisal process is real or pro forma. We noted, however, that the appraisal forms do not include comments on the performance of employees with respect to the new rules on personal searches of passengers.

In March 1999, the Commissioner issued a document implementing a self-inspection program to verify that the Customs mission is being performed in the most effective and efficient way.<sup>21</sup> The Core Areas for Airport Personal Search Policy and Passenger Operations cover the personal search policies.

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**Recommendation 2:** To ensure accountability throughout, the Customs Service needs to specifically identify in the performance management system a way of evaluating the sensitivity of Customs personnel in dealing with the public, particularly in personal search activities. Therefore, human resources/personnel experts should work with Customs Service management to ensure that the performance management system effectively monitors the execution and supervision of a proper personal search system.

There should also be a review of the self-inspection program to determine the extent to which the new directions ensure greater accountability for conformance to the new personal search policies.

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### **Finding 3: The passenger's rights and the role of the U.S. Attorney in assuring that these rights are protected**

There appears to be a weakness in accountability in aspects of the legal system that go beyond the authority of the U.S. Customs Service and reside with the U.S. Attorneys. Granted, border searches are a well-recognized and long-established exception to the probable cause and warrant requirements of the Fourth Amendment. However, there are limits.

The courts have required notification to the U.S. Attorney to seek judicial approval of detention and notification to private counsel or a public defender.

- ***U.S. v. Esieke* 940 F2d 29, 36 (2d Cir) cert. denied, 502 U.S. 992 (1991) had a 24-hour requirement.**
- ***U.S. v. Onumonu*, 967 F2d 782, 790 (2d Cir 1992) had a 24-hour requirement.**
- ***U.S. v. Adekunle*, 2 F3d 559, 561 (5th Cir 1993) required a reasonable time, essentially 48 hours. There the Court of Appeals for the Fifth Circuit stated: “We cannot...countenance the absurdity that one may have his liberty restrained for a longer period based on a mere suspicion than he lawfully could be detained based on probable cause.” The court added: “Under basic Fourth Amendment principles, the government, after detaining a suspected alimentary canal smuggler, must seek a judicial determination, within a reasonable period, that reasonable suspicion exists to support the detention.”**

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**Recommendation 3:** To ensure that the rights of the passengers are adequately protected with every power within the legal system, we recommend that Customs officials contact the U.S. Attorney’s office to seek judicial approval at the first opportunity after they determine that a passenger should be detained on reasonable suspicion of being an internal carrier. Initially we believed that the notification should occur no later than four hours from the initial detention for a personal search. We recognize that the new agreement between the Department of the Treasury and the Department of Justice provides for an eight-hour time limit.<sup>22</sup> This time limit should be monitored within the next year to determine if the agreed-upon time adequately addresses the issues raised in this report.

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## **Finding 4: The staffing levels in the Customs Service**

**The Customs Service rank and file and supervisors have complained about understaffing and lack of overtime pay. They believe this understaffing leads to frustrations in the workforce, which they say could account for some of the rudeness to passengers.**

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**Recommendation 4:** Even though the staffing levels may explain rude treatment of passengers, it is never acceptable behavior. It should be addressed as an issue in the hiring, training, and performance evaluation of all personnel. However, it will be useful for the Service to analyze the minimum staffing requirements for effective processing of passengers and dealing with passenger complaints as the volume of passengers increases.<sup>23</sup> It will be important to be on record with those requirements with the Office of Management and Budget and the Congressional committees.<sup>24</sup>

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## **Finding 5: The information provided to passengers by the Customs Service**

**Some of the problems the Customs Service has had are related to the limited amount of information provided to passengers about the personal search process and the passenger's rights during Customs border searches. The Customs Service has recognized this as a problem and has contracted with a private consulting firm to review the communications strategy as a separate issue, and it is in the process of implementing the recommendations of that firm. It is important to note that some of the inspectors interviewed are concerned about informing passengers of the reasons they were selected for secondary searches for fear that this would reduce the effectiveness of the Service's seizures of narcotics.**

**We know that the intent under the new policies and procedures is to increase the transparency and information provided to the passengers. However, we are concerned that the Service will be reluctant to implement in the field the new guidance to inform the passengers of the reasons and purposes of the searches. Some of the Commission members, based on their interviews, concluded that there is not a clear understanding in the Service of what rights passengers do have.**

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**Recommendation 5:** The Customs Service should state in writing its policy on informing passengers of their rights and the personal search process.<sup>25</sup> The chief counsel needs to work with the public affairs staff to add more to the informational brochures and to the training on passengers' rights. The new directions on passenger information in the new Personal Search Handbook should be emphasized in the training of all personnel. Further, Customs officials should have access to counsel during the process so that they will have legal guidance on informing passengers of their rights. The Commissioner should ask the chief counsel to look into the issue of passenger rights and ensure that all Customs officials are aware of the nature of those rights. The implementation should be monitored.

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## **Finding 6: Informational signs**

**Improvements in informational signs have been made in some of the airports, but more improvement is required.<sup>26</sup> At most of the airports visited by the Commissioners, the information and passenger service representative placards were not placed where incoming passengers could readily see and read them or understand that they are connected to the Customs Service process. In some cases, the signage is behind the secondary area—the area where people are most nervous and least likely to benefit from such information. In other airports, placards were on top of the baggage carousel, but here too passengers were not reading them or realizing that they contained Customs information. The same problem occurs with information about passenger service representatives. That information is not placed where**

**passengers can read it, nor does the information identify the passenger service representative as a Customs employee and someone who can help passengers.**

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**Recommendation 6:** The Customs Service needs to work with the airport authorities to improve the location of the signs and review/update current signs to give passengers a better idea of their rights. Furthermore, the signs referring to the passenger service representatives need to be better placed and clearly state the role and responsibility of the passenger service representatives, specifically their responsibility to assist passengers during Customs processing.

Also, Customs needs to make an effort to include other languages in the signs and other information forms. One option would be for the Customs Service to work with the airport authorities to identify locations and install automated electronic display devices, with key information rotated through in several languages, in strategic places such as above the baggage carousel or in other spots in the baggage area.

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## **Finding 7: The privacy of passengers**

**Lack of privacy for the people identified for secondary searches (the area where passengers are further questioned) continues to be a problem in some of the airports, sometimes for lack of space.**

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**Recommendation 7:** The airport authorities should be persuaded to play a greater role in assisting the Customs Service in developing a proper and private environment for the secondary searches in all airports. We encourage more conferences with selected authorities to address issues of mutual interest, resulting in greater privacy for the passengers. In the interim, the Customs Service should review its current space and provide greater privacy there.

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## **Finding 8: The passenger service representative program**

**In 1992, the passenger service representative program was informally established to serve as an additional resource in the airports for providing customer service in a professional manner, answering questions, and making passengers aware of entry requirements. In June 1999, the policy governing the passenger service representatives was revised.<sup>27</sup> Still, it is not clear whether the traveling public knows about or understands the role of the passenger service representatives.**

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**Recommendation 8:** Customs should take strong steps to explain to passengers the role of the passenger service representatives. Further, the representatives should make recommendations to the Commissioner on how their roles could be strengthened even beyond the most recent changes. This may mean including the passenger service representatives when and where a passenger has complained about the personal search process. This means that the passenger service representatives may be present when the supervisors are reviewing complaints, even if as observers.

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The category 2 issues go to the heart of some of the allegations and ask: Does racial and ethnic profiling occur in the Customs Service as a part of passenger processing procedures? How? Where? Based on what authorities?

Even though the observational technique and not racial profiling is one of the articulable factors, some passengers complain about the passenger processing procedures. The reason for the complaints is that there is a higher percentage of minorities being subjected to a secondary and body searches than is probably their percentage of the traveling public.

### Finding 9: Racial profiling

We operated on the assumption that racial profiling is a technique whereby a set of characteristics of a particular class or race or ethnic origin of a person is inferred from past experience or stereotypes, and data holdings are then searched for individuals with a close fit to that set of characteristics. The Customs Service says it does not use racial and ethnic profiling as part of the passenger processing procedures or any other procedures. Instead, it operates on experience, expertise, intuition, training, information on smuggling trends, and the pattern of past seizures. Its officers observe behavior and physical condition, ask questions, and analyze documents. What is clear, however, is that these articulable factors and observation techniques were developed by Customs and then passed forward in the Customs system. They have never been reviewed by an outside professional expert (e.g., a psychologist or sociologist) to see if they are stereotypical or could contain stereotypes.<sup>28</sup>

Officials stated their own concerns as follows:

- They are keenly aware of their responsibility in stopping the flow of drugs into the United States.
- They also are concerned about the Service's reputation and the publicity surrounding the numerous allegations of racial profiling.
- They are concerned about the possible effect the allegations and responsive policy changes could have on the performance of their law enforcement duties.

**Some Customs officers interviewed have expressed disapproval of the decisions of their colleagues that led to passenger searches that caused the recent publicity and are now under scrutiny and litigation. Officers have commented that with similar facts they would not have proceeded with cavity searches, X-rays, body searches, or monitoring of bowel movements. Many suggest that the lack of judgment is a result of lack of experience and adequate supervision. Part of the present response to the internal and external concerns is to increase the role of supervisors in decision-making. It is our view that any changes in procedures that increase the role of supervisors and possibly the role of passenger service representatives in these decisions are steps in the right direction.**

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**Recommendation 9:** Because some segments of the public will not believe that there is a great difference between racial profiling and using an articulable factor list, the Customs Service needs to explain clearly that the kinds of indicators it finds through experience support secondary questioning and a body search. It does not seem that sharing general information (not specific details) with the public would reduce the number of seizures. Furthermore, it seems that general disclosure would improve the public's understanding and respect for the role and responsibilities of the Service. It will also be very important for the articulable factors, including observational techniques, to be reviewed by professionals outside of the Customs Service to determine whether they are based on stereotypes, and for the findings of that review to be made public.

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## **Finding 10: The use of observational techniques as one of the articulable factors**

**The guidance and training for inspectors cover the rationale for secondary searches allowing for the use of articulable factors (observation techniques) as one of the six bases for searches.<sup>29</sup> The observation techniques have been developed over time by inspections and passed on through in-house training. These factors have been infrequently reviewed within the Service and rarely reviewed by non-Customs Service professionals. Officers in the field recommended that the list be reviewed periodically to revalidate it.**

**In March 1999, the Assistant Commissioner, Field Operations, established a committee to review the targeting criteria used in air passenger processing. In June, that committee issued a report that proposed significant changes in the methodology of selecting and targeting passengers for personal search.**

**Several observations need to be stated about the proposed changes in policy: (1) It is too early to tell the extent to which the recommendations, now policy, will actually be implemented across-the-board and become institutionalized. That is the case even when the policy changes are issued because so much depends on the experi-**

ence and judgment of the inspectors and their supervisors. (2) The change in the actual behavior in the field will depend on the quality of direction and training.

It is important that the field staff understand and accept these changes. The initial reaction of some of the Customs inspectors is that the changes will have a chilling effect on the seizures of narcotics coming into the United States, hence diminishing their enforcement authority.<sup>30</sup> One member of the Review Commission reported: "There appears to be a keen sense of inspectors being under the microscope and somewhat reluctant to refer passengers to secondary searches, and supervisors are fearful of approving searches beyond secondary. The feeling of being second-guessed and overreaction following the current situation is high." The recent statistics belie that conclusion. There were fewer personal searches between June 1998 and July 1999—795 air passengers, down from 3,416 in the previous fiscal year.

#### *FY 98 vs. FY 99*

The fact is that Customs conducted 47 percent fewer personal searches on arriving passengers, but the search efficiency improved by 65 percent. In FY 1998 the efficiency was 3.5 percent, and in FY 1999 the efficiency was 5.8 percent.

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**Recommendation 10:** The Customs Service needs to put into place a formal and regular monitoring and evaluation process to determine the extent to which the new guidance is accepted and implemented by Customs officers.

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**Category 2 also focuses on the manner in which the Customs Service handles abuses in passenger processing procedures by officials when enforcing the law to protect the national interest, balanced against the need to protect individuals' privacy rights.**

#### **Finding 11: Violations in the present passenger processing procedures**

Violations have occurred in the present passenger processing procedures. The Customs Service's own adverse action/disciplinary reporting system indicates that there have been abuses. However, the abuses/violations do not appear to be widespread. Some people expressed concerns that accusations of abuses and violations of procedures were not properly refuted.

**Recommendation 11:** The public affairs/communications arm of the Customs Service, without violating the rights of the employees, and working with the leadership of the Customs Service, needs to plan a strategy and process for the future that refutes unfair accusations about abuses and violations of the Service's procedures. The communications should spell out the functions of the Service and honestly address the abuses that do exist. The Customs Service needs to ensure that abuses and violations by officials are reported to the public, and also that sanctions are imposed in a proper and transparent manner.

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## **Finding 12: Discipline**

**The issue of discipline of Customs employees who are found to have acted counter to the laws and guidelines was also a subject of this review.**

**A most instructive document in this regard was a February 10, 1999, memorandum to all Customs employees from Commissioner Kelly. He sent the message that (1) the Service must take misconduct seriously; (2) supervisors and employees alike must be subject to the same rules and the same processes; and (3) everyone must be treated fairly and consistently. The Commissioner noted misconduct and resultant discipline for fewer than 3 percent of the workforce in three years (1996 to 1998). The questions remain, however, whether the reporting system noted all misconduct and whether supervisors and managers are taking misconduct as seriously as the Commissioner is.**

**Below are some basic information and statistics on the actions taken by the Service.**

*For the first two quarters of fiscal year 1999, 70 adverse and disciplinary actions were effected. There were 54 suspensions for a variety of reasons, including disruptive and unprofessional conduct and failure to follow proper search procedures.*

*On May 3, 1999, the Discipline Review Board was established. By the end of June, the Discipline Review Board had reviewed 58 cases for the May/June period, of which 30 percent warranted adverse action proposals.*

**The Customs Service had in its new 1999 Table of Offenses and Penalties the following that related to the personal search process:**

- **"Failure to observe established policies or procedures in the apprehension or detention of suspects or violators" (14-day suspension to removal for second/subsequent offenses).**



- **“Use of discourteous, unprofessional, derogatory, or otherwise inappropriate language, gestures, or conduct toward members of the public” (5-day suspension to removal for second/subsequent offenses).**
- **“Use of critical, demeaning, or degrading remarks, comments, observations, statements, or actions which have the purpose or effect of discriminating because of race, color, age, sexual orientation, religion, sex, national origin, or disability” (3-day suspension to removal for second/subsequent offenses).**
- **“Intentional or reckless disregard of the rules governing arrests, searches, seizures” (30-day suspension to removal for first offense).**
- **“Criminal, infamous, or notoriously disgraceful conduct, or other conduct prejudicial to the government” (could lead to removal on first offense).**
- **“The Table of Penalties is a guide, and there may be certain incidents of misconduct that are so serious as to warrant removal on the first offense, despite the published range of penalties. While consistency is clearly the goal, each case is different, and the due process afforded each employee can affect the final outcome in significant ways.”**

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**Recommendation 12:** The Commissioner should direct the senior management throughout the organization to ensure that the new discipline strategy and the new personal search policies are a reality. It should be clear to one reviewing discipline reports that supervisors and managers are taking seriously the importance of disciplining those who violate the personal search procedures. This means that there should be an annual report to the Commissioner on the relationship of citizen complaints, supervisors’ reports of violations of the policies, and procedures and disciplinary actions.

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**Category 3 issues consider the effectiveness of the new approaches to personal searches as well as additional initiatives that could be considered by the Customs Service.**

**Among the specific topics to be covered under category 3 are the new approval processes, training initiatives, passenger information, passenger complaints, and data collection and analysis.**

**This section of the report also considers additional initiatives, procedures, and recommendations for the future. Among the future initiatives under review are technological solutions, lessons from other law enforcement agencies, further review of the extent and composition of training, improved identification of inspectors, and potential contributions to effective personal search procedures by the airlines, the media, and airport authorities.**

### *New Processes and Procedures*

**In September 1999, the Customs Service completed the basic provisions of a revised Personal Search Handbook, which should be issued as the official handbook early in 2000. The revised handbook reflects significant changes in the personal search policies and procedures that were the basis of the March 1997 handbook. We took particular note of the tone of the handbook, which reflected the plan of the Commissioner to alter the performance, as well as the perception of the performance, of the Service regarding the personal search process. Below are excerpts from Commissioner Kelly's message:**

*The U.S. Customs Service is granted broad authority for very good reasons. Travelers who attempt to smuggle illegal narcotics and other contraband pose a grave risk to our citizens, our communities, and our national economy. It is our mission as the federal government's leading interdiction agency to prevent these harmful items from entering the country.*

*The personal search is an indispensable tool in helping us to achieve our mission. However, it is also an authority that must be used fairly and judiciously. In our determination to protect America from the scourge of illegal drugs, we cannot forget our corresponding duty to safeguard the rights of its citizens.*

*Customs personnel receive extensive training on what factors must be used to select individuals for personal searches. Under no circumstances will we tolerate selection criteria that stray from those officially approved by the agency.*

### **Finding 13: The revised Personal Search Handbook**

**The table below relates the changes made in the new Personal Search Handbook to the recommendations in this report.<sup>31</sup>**

<b>Changes in Personal Search Procedures Recommendations</b>	<b>Relevant Report</b>
A Customs supervisor must approve all pat down personal searches.	Recommendations: 2, 14
A supervisor must fill out a check sheet for all negative personal searches.	Recommendations: 2, 14
Any person delayed for two hours for a personal search will be given the opportunity to have a Customs officer notify someone of the delay.	Recommendations: 3, 5, 13
A port director must approve all searches that require moving a person to a medical facility for a medical examination. In the event of a prolonged detention (eight hours or longer), where probable cause has not been developed, the port director must reapprove further detention.	Recommendations: 2, 3, 13
Customs officers can consult with Customs counsel at any time. Such consultation is mandatory for all medical examinations.	Recommendations: 3, 5, 14

When taking a person to a medical facility for a medical examination, Customs officers are required to explain the process and timelines, without jeopardizing law enforcement issues.

Recommendations: 5, 14

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When Customs detains a person for eight hours and probable cause for arrest has not been developed, Customs will notify the U.S. Attorney to secure authorization from a federal magistrate for further detention.

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Recommendations: 3

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**Recommendation 13:** The Customs Service should take steps to ensure that the revised Personal Search Handbook is in the hands of all supervisors, passenger service representatives, and personnel involved in personal search activities, and that it is the basis of the training activities. The Commissioner should charge his staff to review the recommendations in the Commission's report to determine which recommendations have not been covered by the new policies and procedures and provide a strategy for adopting the recommendations or providing a strong basis for declining to adopt them.

It might be useful for Customs to develop or pull together a "Customs Support Group" or "Friends of Customs" that meet periodically to see how things are going. Members of the group might include representatives from the airlines, Customs officials, private citizens/ eminent persons, Personal Search Review Commission members, and others.

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## **Finding 14: The revised approval process**

**Although new approval steps designed to ensure greater accountability are in place throughout the organization, it is still important that the inspectors and supervisors be trained in addressing passenger concerns.**

**Effective May 20, 1999, the Field Operations Personal Search Policy was amended to require that all personal searches that include removing a person to a medical facility for a body cavity or X-ray search or detention for a monitored bowel movement require the approval of the port director. The port director is to review the articulable factors and must consult with the associate chief counsel. The approval or disapproval is to be recorded in the appropriate Treasury Enforcement Communications System.**

**This change in procedure appears to be responsive to the need to ensure accountability for decisions to intrude on the privacy of individuals. Furthermore, the necessity to justify one's position requires thought.**

**Effective May 27, 1999, the personal search policy was amended to provide that all pat down personal searches require prior approval of a supervisor unless there is a concern that a weapon may be involved.**

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**Recommendation 14:** The Customs Service should take steps to ensure that the revised policy is implemented in the field. This means that in addition to the regular monitoring by the supervisors, senior management should establish an annual evaluation to cover, among other issues, the extent to which the approval process change is being implemented.

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## **Finding 15: Training**

**Training programs are not new to the Customs Service, but it is not clear that diversity/sensitivity training has been a high priority in the past. Recently, the Service has instituted new training packages that cover such topics as cultural interaction and interpersonal communications.<sup>32</sup> Furthermore, the training will now cover the new policies. Most of the training in this area is in-house. The jury is still out on the effectiveness of the new training. It is instructive to note that some of the personnel interviewed said some of the training was too elementary, too “touchy feely,” and/or not sufficient. Others interviewed by the Commission were pleased with the concentration on training and believed that it would make a difference.**

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**Recommendation 15:** The Customs Service should seek to bring in outside diversity experts to do the training, to ensure that the training represents the “best practices” in diversity training, and to ensure that it is totally independent of the past practices and culture of the Service. Also, there should be two types of evaluation of the effectiveness of the training—internal and external. The evaluations should determine the effectiveness of the training from the point of view of those trained as well as from the point of view of the supervisors and managers. The evaluations of supervisors/managers should determine the extent to which the training led to change in behavior that reflects the changes in personal search policy. From time to time, the Customs Service should have an outside evaluation of its overall training plan and strategy.

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## **Finding 16: Informing passengers of the personal search process and of their rights**

**As stated earlier, some of the problems the Customs Service has with the public’s perception of the Service are related to the limited amount of information provided to passengers about the personal search process and passenger rights during Customs searches.**

**The Customs Service has taken the initiative in implementing a variety of changes in how it provides information to the public.<sup>33</sup>**

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**Recommendation 16:** The Customs Service should gather data, using the most effective approaches and considering focus groups and surveys, to determine the effectiveness of the new information strategies. Also, before it invests large amounts of money in a computerized digital informational broadcast system at all airports, the Service should test the prototype to determine if they actually result in a better understanding by passengers of the process and of passenger rights.

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## **Finding 17: Collecting, analyzing, and responding to passenger complaints**

**The Commission was surprised to find little or no central tracking of citizen complaints until March 15, 1999. Had there been a central data center on passenger complaints about the search process, the Service would have had early warning of citizen dissatisfaction with the personal search processing at one or more of the airports.**

**In March 1999, the Customer Satisfaction Unit was established within the Office of Field Operations to centralize the processing of complaints from the general public, travelers, industry, other government agencies, and Congress. Each port, as well as headquarters, will establish a committee to perform quarterly reviews of all complaints/compliments received within the port to determine whether further action is necessary. This seemed to be a necessary step to understanding passenger complaints and being prepared to address them through individual actions and, where necessary, policy changes.**

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**Recommendation 17:** Because the collection and analysis of customer complaints are important to monitoring the viability of the personal search policies and the implementation of those policies, the management of the Customs Service, including headquarters management, should review the data monthly, and summary analyses should be made available to the field at least on a quarterly basis.

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## **Initiatives that should be considered**

### **Finding 18: The potential role of airport authorities and airline companies**

**The airlines could help the Customs Service if they used their magazines and their video information systems to give more details to passengers about the role and responsibilities of the Customs Service and the personal search processing.**

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**Recommendation 18:** The airlines need to understand the importance of assisting the Customs Service in carrying out its responsibilities. This means the airlines, possibly working with the Federal Aviation Administration, could be encouraged to show a video covering Customs policies and procedures. The video would be shown before a plane lands to educate passengers about the responsibilities of the Customs Service and what to expect as a passenger entering the United States. The airlines could also be asked to provide more interesting and engaging information about the role of the Customs Service in their magazines.

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## **Finding 19: The identification by passengers of Customs officers at the ports of entry**

**Whether Customs inspectors should use name badges when on duty has been a long-standing subject of debate. The supervisors already wear name badges. Proponents of name badges on inspectors argue that they will discourage improper behavior on the part of the inspectors. Opponents argue that the safety and security of the inspectors is in jeopardy because name badges will make officials easily identified after hours, and hence subject them and their families to attacks by drug dealers or others that they have arrested for seizures. It is worth noting that officials of other agencies on the line/at the border wear name tags, and those other agencies have not found a need to reverse that policy for safety reasons. Neither side of the argument has been proven.**

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**Recommendation 19:** We recommend further analysis of the "name badge" issue to determine to what extent the safety of the inspectors would be in jeopardy with name tags and to what extent the benefit of improving the behavior of inspectors outweighs the risks. At the very least, the Customs Service should make more visible the numbers of the badge holders. This could mean larger and darker badge numbers that are easily readable.

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## **Finding 20: The future of technological solutions**

**The Customs Service has introduced new technological solutions to provide effective service to the public in the least intrusive manner. It is difficult to determine whether these are going to make a difference.<sup>34</sup> Body scanning equipment is one example. Body Scan Imaging Technology has been used at JFK (AS&E BodySearch) and Miami (RAPISCAN Secure 1000) since April 1999. These units will verify whether a passenger is carrying contraband or merchandise under the clothing. Units also have been placed in Atlanta, Chicago, Houston, and Los Angeles.**

**It is important to note that only 13 percent of the passengers given the option of the body scan imaging technology have chosen it over the body search. Many passengers have observed that it takes more time, in part because of the time it takes to fill out the forms before the scanning, and that the delay can hinder passengers in making connecting flights or meeting their waiting parties.**

**Another technological innovation is the digital mobile X-ray, which would eliminate the need to transport passengers to distant medical facilities because the images would be digitized and transmitted to the local hospital for a reading by a medical doctor. The present plan is to have the digital mobile X-ray at major airports in FY 2000.**

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**Recommendation 20:** The Service should work with the manufacturers of the body scan to make the equipment more passenger-friendly. Also, the Service should work to simplify its paperwork associated with the scanning process or use technology (computers) to assist in this process (the form could be put on a computer with the required questions). Further, the Service should determine whether the experience to date argues for continuing to place the equipment in other airports.

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## Endnotes

- 1 Throughout, this report contains references to the various initiatives that Commissioner Kelly has taken to respond to the complaints about the personal search selection process. A more detailed discussion of the initiatives can be found in the discussion of category 3 issues in section 3.
- 2 The press release, dated April 8, 1999, said that Commissioner Kelly had formed an independent Personal Search Review Commission "to look into U.S. Customs policies for processing travelers at international airports, review procedures for and methods of processing travelers and selecting passengers for further examination at airports through Customs, review adequacy of information made available to the traveling public about U.S. Customs procedures and search authorities, and review search procedures, including personal searches, and the impact of these procedures on air passengers." The release continued: "When the review is concluded, the Commission will advise the Commissioner on how U.S. Customs can effectively perform its informational and search responsibilities when processing passengers."
- 3 This is one definition of profiling used by the Commission: "Racial profiling is a technique whereby a set of characteristics of a particular class or race or ethnic origin of a person is inferred from past experience or stereotypes, and data holdings are then searched for individuals with a close fit to that set of characteristics." The Professional Law Enforcement Seminars define a drug profile as "a compilation of characteristics gained from intelligence sources and the experience of law-enforcement personnel."
- 4 Hubert T. Bell is the Inspector General for the United States Nuclear Regulatory Commission. Robin Renee Sanders was Director for Africa at the National Security Council and currently is a State Department official. Ana Maria Salazar is the Deputy Assistant Secretary of Defense for Drug Enforcement Policy and Support. Constance Berry Newman is the Under Secretary of the Smithsonian Institution, formerly Director of United States Office of Personnel Management. Sanford Cloud, Jr., is the president and chief executive officer of the National Conference for Community and Justice.
- 5 Appendix A shows the interview guide used by the Commission members. This was, in fact, only a guide to remind the members of the basic lines of inquiry upon which we had agreed. Appendix B shows two matrices that suggested the sources of certain types of information. The table below lists the airports visited by the Commissioners and the percentage of travelers entering through those airports.

Airports Visited	% Travelers
JFK	13.1
Miami	11.1
Los Angeles	10.0
Chicago	5.5
Newark	5.4
San Francisco	4.4
Atlanta	3.5
Houston	3.2
Vancouver	2.8
Dulles	2.5
Boston	2.3
Montreal	1.9
Baltimore	.4
Washington Reagan National	< .2



TOTAL

66.1

- 6 The airports visited were New York JFK, Miami, Los Angeles, Chicago O'Hare, Houston, Atlanta, Washington Dulles, Boston, Baltimore, Newark, San Francisco, Washington Reagan National and Vancouver (pre-clearance) and Montreal (pre-clearance). Among the 14 airports chosen were 9 of the top 15 airports in terms of passengers entering the United States.
- 7 An interview schedule and a table of sources were developed to give the members general guidance on information to be gathered while in the field and at headquarters. This was not a formal survey with statistical sampling of those interviewed, but rather a guide to remind the members of the major topics to be covered. Copies of the interview guide and the table of sources appear in appendices A and B.
- 8 Amanda Buritica's and Janneral Denson's testimonies are included in the *Congressional Record*.
- 9 Class certification has been requested but not granted yet. The class action is in the United States District Court, Northern District of Illinois, Eastern Division. The suit says the common questions of law and fact include (a) have Defendants violated the Fourth and/or Fifth amendments to the U.S. Constitution by targeting African American women for nonroutine pat down searches, and/or body searches.
- 10 The Customs Service responded to the January 1998 letter by replying both to a Senator who inquired about the matter and to the lawyer who posed the questions: "We regret that the [passenger] was dissatisfied with the February 2, 1992, reply he received from our [location removed] Port Director." The Service did address the letter-writer's specific concerns with the following information in a broader response: (a) Because of privacy and officer safety concerns, the names of the Customs officers involved could not be provided, but Customs did provide the badge numbers and the badge number of the supervisory Customs officer. (b) Profiles of travelers are not used in Customs enforcement procedures. (c) "Customs officers are not instructed or trained to verbally abuse and thereby inflict emotional distress on any traveler. On the contrary, our officers are trained and supervised to treat all travelers with courtesy and tact. When we are able to substantiate that one of our employees has failed to maintain Customs' strict professional standards, we take firm corrective action."
- 11 Based on fiscal year 1999 Customs Law Enforcement Activity Report (CLEAR) and Operational Management Report (OMR) data (November 4, 1999)) from the U.S. Customs Service.
- 12 Treasury Enforcement Communications System data.
- 13 Act of July 31, 1789, ch. 5, Sec. 23, Sec. 24, 1 Stat. 43. See 19 USC Sec. 507, 1581, 1582.
- 14 The U.S. Supreme Court in *United States v. Ramsey*, 431 U.S. 606 (1977), held that searches made at the border, pursuant to the longstanding right of the sovereign to protect itself by stopping and examining persons and property crossing into this country, are reasonable simply by virtue of the fact that they occur at the border, and should, by now, require no extended demonstration. The Court, citing *Carroll v. United States*, 267 U.S. 132 (1925), noted that the Fourth Amendment "does not denounce all searches or seizures, but only such as are unreasonable."
- 15 Summary information on the court cases is in Appendix C.
- 16 The data on searches are based on certain definitions of terms as explained in this endnote. This report does not use the terminology "strip search," but rather the term now used by the Customs Service, "body search."  
The level and definitions of searches are as follows: Routine personal searches and seizures: removal of an outer coat or the examination of a handbag are not considered searches of the person. Pat downs: lowest level. By policy, some or mere suspicion is needed to pat down. A pat down includes removal of shoes, lifting of a pants leg or the hem of a skirt, intrusions into pockets, removal of belts, patting of officer's hands over the suspect's clothed body. Pat downs need to be done before an officer proceeds to a nonroutine personal search, except when the officer reasonably suspects that a person might have dangerous articles concealed. The pat down is a search for merchandise and differs from a frisk, which involves a search for weapons. Nonroutine personal searches: Nonroutine personal searches include the body search, X-ray, and body cavity searches. The reasonableness requirement of the Fourth Amendment and Customs policy require reasonable suspicion for all nonroutine personal searches. Reasonable suspicion must be based on objective, articulable facts. For a search to be reasonable, an officer must have reasonable suspicion that merchandise is on the body to conduct a body search; that merchandise is in the body to conduct an X-ray; that the merchandise is in a body cavity to have a body cavity search conducted. These definitions are from the Course for Customs Officers, 1999 edition, page 174. The types of nonroutine personal searches include X-rays under the consent: If, after the completion of a pat down, the officer continues to have reasonable suspicion, the suspect shall be asked to consent to an X-ray. The next type of nonroutine personal search is the body cavity search: By policy, reasonable suspicion must be founded upon a clear indication or plain suggestion of internal conceal-

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ment. That standard is met by specific information that merchandise is concealed within the body, a foreign object protruding, or totality of circumstances. Body cavity searches may be conducted only by authorized medical personnel.

- 17 In August 1999, the Commission was briefed on the changes made as a result of the personal search review, which covered both where the Customs Service has been and where it is going. With regard to where the Service has been, the review found the following:

- No supervisory approval of pat downs required.
- No mechanism for passengers to voice concerns.
- Bad data collection and data input.
- Inconsistencies in implementation of personal search policy.
- No continual personal search training.

With the changes brought about under the leadership of Commissioner Kelly, the following now are a part of the procedures:

- Supervisory approval for all pat downs.
- Port director approval for all medical examinations.
- Customs counsel available to provide assistance.
- Continual review of detentions by port directors.
- Notification of family/friend of Customs delays.
- Supervisory check sheet and comment cards for feedback.
- Improved enhancements in collection and analysis of search data.
- Established a Passenger Data Analysis Unit to review data.

The Customs Service also told the Commission that it is implementing the following:

- Collection and analysis of data required on all secondary inspections.
- Medical examinations to be conducted only after port director has consulted counsel.
- Detainee to be allowed to contact an attorney after eight hours.
- New personal search handbook to be published.
- Personal search training to be conducted.
- Personal search training to be required for any officer conducting personal searches.

- 18 There are 20 Customs Management Centers. Before the changes made by Commissioner Kelly, the responsibilities of the centers included overseeing operations within their area of jurisdiction; exercising the line authority over the ports; providing technical assistance; and overseeing the execution of the core business processes-trade compliance, passenger, and outbound.
- 19 With regard to the accountability systems in the Customs Service, the Commissioner said at the May 20, 1999, hearing before the House Ways and Means subcommittee: "Customs airport personnel work hard to carry out their jobs as best as they possibly can in a difficult environment. The personal search is one of their greatest challenges. In theory, it is a procedure that they undertake as a last resort and with the maximum of supervision. In practice, it is admittedly a procedure that we have found in recent years to have suffered from poor oversight, insufficient training, and a lack of supervision. This may in large part contribute to the allegations of bias that surround Customs use of the personal search."
- 20 The agreement form appears in Appendix D.
- 21 Appendix E provides information on the self-inspection program, including the March 1999 announcement and the August 1999 directive.
- 22 The new timetable on personal searches is as follows:
- Two-hour mark: Where an individual has been detained, based upon reasonable suspicion, by the Customs Service for two hours, the individual will be given the option of having Customs notify others of his detention.
  - Eight-hour mark:
    - No later than eight hours after the start of an individual's detention by the Customs Service, Customs will contact the local U.S. Attorney's Office to determine whether, in an Assistant U.S. Attorney's opinion, reasonable suspicion exists for continued detention of the individual.
    - If an Assistant U.S. Attorney believes that probable cause has been established, the Attorney will apply for a warrant before a magistrate.
    - If the Assistant U.S. Attorney determines that probable cause does not yet exist, but believes that reasonable suspicion exists, he or she will so advise Customs. However, the decision to continue or discontinue the detention in such cases remains the sole responsibility of the Customs Service.
    - If the Assistant U.S. Attorney believes that reasonable suspicion does not exist, the Customs Service will release the detained person.
    - Contact with the local U.S. Attorney's office may occur before the eight-hour mark as the situation warrants. However, where detention is based upon reasonable suspicion, it is expected that most contacts will occur at the eight-hour mark.
  - Special procedures for certain circuits: Where judicial circuits, such as the Second and Fifth, require notification of an Assistant U.S. Attorney or review of a magistrate within a given time frame from the start of an individual's detention, the Customs Service and the local U.S.